

David J. Bradley, Clerk

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State inmate Jose Manuel Bejarano (TDCJ #1369271) has filed a handwritten complaint that appears to assert civil rights claims under 42 U.S.C. § 1983. Bejarano has filed more than one supplement to his complaint [Docs. # 6, # 10, # 11, # 16]. He has also filed a motion for leave to proceed *in forma pauperis* [Doc. # 13]. As a result, the Court is required to scrutinize the complaint and dismiss the case, in whole or in part, if it determines that the action is frivolous, malicious, fails to state a claim upon which relief may be granted, or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). After reviewing all of the pleadings and the applicable law, the Court concludes that this case must be dismissed for the reasons that follow.

I. BACKGROUND

Public records reflect that Bejarano is presently incarcerated in the Texas Department of Criminal Justice – Correctional Institutions Division (“TDCJ”) as the result of a conviction for attempted indecency with a child in Pecos County Case No. P-2629-112-CR. *See* TDCJ Offender Information website located at: <https://www.offender.tdcj.texas.gov> (last visited Jan. 30, 2019). Bejarano received a twenty-year prison sentence in that case, which was affirmed on direct appeal. *See Bejarano v. State*, No. 08-006-00183-CR (Tex. App. — El Paso April 17, 2008, no pet.).

Bejarano has filed the pending complaint against Steven H. Rosenbaum, who serves as Special Litigation Section Chief for the United States Department of Justice, President Donald Trump, and several other individuals who appear to have been involved in his underlying criminal conviction for attempted indecency with a child. Bejarano’s *pro se* pleadings, which are incoherent and difficult to decipher, are entitled to a liberal construction, meaning they are subject to “less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Liberally construed, Bejarano alleges that the defendants are harassing him telepathically and are attempting to murder him.

II. DISCUSSION

“A district court may dismiss as frivolous the complaint of a prisoner proceeding [*in forma pauperis*] if it lacks an arguable basis in law or fact.” *Geiger v. Jowers*, 404 F.3d 371, 373 (5th Cir. 2005). “A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges violation of a legal interest which clearly does not exist.” *Samford v. Dretke*, 562 F.3d 674, 678 (5th Cir. 2009) (citations and internal quotation marks omitted). A complaint lacks an arguable basis in fact when the plaintiff’s allegations are so “fanciful,” “fantastic,” and “delusional” as to be “wholly incredible.” *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992) (quoting *Neitzke v. Williams*, 490 U.S. 319, 325, 328 (1989)).

Bejarano’s rambling allegations do not establish a viable claim against any of the individuals listed his pleadings. Because his allegations are so delusional as to be wholly incredible, the court concludes that this case is subject to dismissal as both legally and factually frivolous. *See Harris v. Hegmann*, 198 F.3d 153, 156 (5th Cir. 1999) (“A complaint is factually frivolous when the facts alleged are fantastic or delusional scenarios or the legal theory upon which a complaint relies is indisputably meritless.”) (citations and internal quotation marks omitted).

III. CONCLUSION AND ORDER

Accordingly, the Court **ORDERS** as follows:

1. The plaintiff's motion for leave to proceed *in forma pauperis* [Doc. # 13] is **GRANTED**.
2. The TDCJ Inmate Trust Fund shall deduct funds from the inmate trust account of Jose Manuel Bejarano (TDCJ #1369271) and forward them to the Clerk of Court on a regular basis, in compliance with the provisions of 28 U.S.C. § 1915(b), until the entire filing fee for indigent litigants (\$350.00) has been paid.
3. Bejarano's complaint is **DISMISSED** with prejudice as frivolous.
4. The dismissal will count as a "strike" for purposes of 28 U.S.C. § 1915(g).

The Clerk's Office will provide a copy of this order to the plaintiff. The Clerk will also provide a copy of this order: (1) the TDCJ - Office of the General Counsel, P.O. Box 13084, Austin, Texas, 78711, fax: 512-936-2159; (2) the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, fax: 936-437-4793; and (3) the Manager of the Three Strikes List for the Southern District of Texas at Three_Strikes@txs.uscourts.gov.

SIGNED at Houston, Texas on January 31, 2019.



NANCY F. ATLAS
SENIOR UNITED STATES DISTRICT JUDGE